

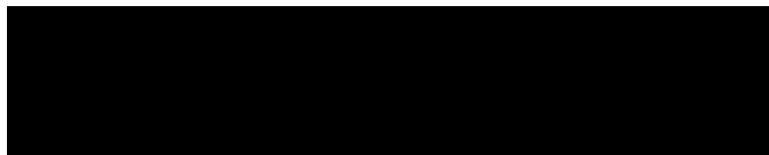
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



D7

DATE: **NOV 09 2011**

Office: CALIFORNIA SERVICE CENTER

FILE:



IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a [REDACTED] established in August 2009, intends to operate a trade promotion office in the United States. It indicates that it is a subsidiary of the [REDACTED]. The petitioner seeks to employ the beneficiary as the Director General of its new office in the United States.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has a qualifying relationship with the beneficiary's foreign employer. Specifically, the director's determination was based on an observation that the funds wired to the U.S. entity as an initial capital investment were provided by [REDACTED] rather than by the petitioner's claimed parent entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that [REDACTED] and Medium Business Center is "one of the arms of [REDACTED]" and therefore, the funds transferred for the establishment of the U.S. company were in fact originated from the parent entity. Counsel submits a brief and additional evidence in support of the appeal.

## **I. The Law**

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

The sole issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

\* \* \*

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

- (L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it has a qualifying relationship with [REDACTED]. The petition was signed by the Chief Executive Officer of the [REDACTED]

The petitioner provided copies of its articles of incorporation and by-laws documenting that it was established as a non-profit California Mutual Benefit Corporation on August 13, 2009. In a letter dated September 1, 2009, the petitioner stated that the U.S. company is "100% under the control and direction of the [REDACTED] through the [REDACTED] in [REDACTED], South Korea." The petitioner explained that the U.S. office was formed "to assist in the development of trade promotion between U.S.-based companies and [REDACTED] and vice versa." The petitioner stated that the beneficiary, in his role as General Director of the U.S. office, will "report directly to the [REDACTED]"

The petitioner provided a wire transfer receipt confirming that the U.S. office received a wire transfer in the amount of approximately \$50,000 from the [REDACTED] and Medium Business Center on August 28, 2009.

The petitioner's business plan further states that the petitioner "will operate as a nonprofit trade promotion office under the direction of [REDACTED]," and that both the petitioner and [REDACTED] "shall be under the control and direction of [REDACTED] Government." The business plan further indicates that the U.S. office "will operate on an annual commitment of \$400,000 - \$450,000 . . . from the [REDACTED] via the [REDACTED] and Medium Business Center."

The director issued a request for additional evidence ("RFE") on September 24, 2009, in which she requested that the petitioner submit, *inter alia*, the following: (1) copies of all of the U.S. company's stock certificates; (2) a copy of the U.S. company's stock ledger; (3) a copy of the U.S. company's Notice of Transaction Pursuant to Corporations Code Section 25102(f) showing the total offering amounts; and (4) evidence to show that the foreign parent company has, in fact, paid for the U.S. entity. The director indicated that such documentation should include copies of the original wire transfers, canceled checks, and deposit receipts indicating the monetary amounts for stock purchased. The director noted that for all funds not originating with the foreign entity, the petitioner should explain the source and reason for receiving such funds, and provide the names of all account holders depositing these funds and their affiliation to the foreign or U.S. entity.

In a response dated October 8, 2009, counsel explained that the U.S. company was formed as a Non-Profit Corporation, and as such it cannot provide stock certificates, a stock transfer ledger or a Notice of Transaction Pursuant to Corporations Code Section 25102 as evidence of ownership. Counsel noted that the company's initial funding was wired from the [REDACTED], and that this entity "is the arm of the [REDACTED] Government responsible for overseas trade promotion."

The petitioner also provided a copy of a brochure describing the activities of [REDACTED], which indicates that it was "established as a non-profit organization in 1997 by [REDACTED] government."

The director denied the petition on October 21, 2009, concluding that the petitioner failed to establish a qualifying relationship between the U.S. entity and the claimed foreign parent entity. This finding was based on a determination that the petitioner failed to submit sufficient evidence that the foreign entity paid for ownership of the U.S. entity. The director emphasized that "the company that made the wire transfer abroad is named [REDACTED]"

On appeal, counsel contends that the director's decision was in error, as the record clearly demonstrates that [REDACTED] is in fact an arm of the foreign parent entity. Counsel emphasizes that state governments in the United States establish agencies and other state-controlled entities with responsibilities that are comparable to those performed by the [REDACTED]

Counsel further states that [REDACTED] "is not an independent company that operates free of any government influence." Counsel asserts that the relationship between the U.S. entity and the foreign entity has been thoroughly documented and explained.

Upon review, counsel's assertions are persuasive. The petitioner has submitted sufficient evidence to establish a qualifying relationship with the foreign entity.

It appears that the director found inadequate explanation in the record as to why the funds for establishment for the U.S. entity were provided by [REDACTED] rather than by [REDACTED]. The petitioner has consistently indicated that the foreign entity is in fact establishing the U.S. company through [REDACTED] funding the U.S. entity through [REDACTED] and requiring the beneficiary to report to [REDACTED]. The record also establishes that [REDACTED] is a component of the [REDACTED] Government. Therefore, the fact that the funds were transferred by [REDACTED] directly is not indicative of ownership by any entity other than the claimed foreign entity.

The director cited no other grounds for denying the petition, and upon *de novo* review, the AAO sees no additional basis for denial. Accordingly, the AAO will withdraw the director's decision dated October 21, 2009 and approve the petition. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, the petitioner has met its burden of proof.

**ORDER:** The appeal is sustained.